Battered Women, Petty Traitors, and the Legacy of Coverture

Frances E. Dolan

In the 1998 film *A Perfect Murder*, a woman who is beautiful, brilliant, and heiress to 100 million dollars kills her sinister husband—who has hired someone to kill her so he can get her money—in the midst of a struggle in which she has struck the first blow. Although the character played by Gwyneth Paltrow is far more active than the character Grace Kelly played in the original 1954 film *Dial M for Murder*, her pro-active approach to the problem of the murderous husband is to kill him. After she does so, a sympathetic policeman reassures her, "what else could you do?" What interests me is why do stories about spousal conflict so often come to this?

Not all films depicting violent spousal conflict end in the death of one party or the other, but many do. A classic of the genre is *Sleeping with the Enemy* (1991), in which the wife, at last, must murder the husband who has been stalking her ever since she left him. Her act is presented both as premeditated—she calls the police to report the murder before she shoots him—and as self-defense. In *Break Up* (1998) and *Double Jeopardy* (1999), wives are unjustly suspected of murdering their husbands. Ultimately, both wives do kill their husbands in self-defense; neither is either tried or punished for the murder (one has already served her time). In *The Rainmaker* (1998), a young lawyer who has befriended a battered wife ends up beating up her abusive husband in self-defense. She then stops him when he is on the point of killing her unconscious husband, saying "get out, you were never here" and finishes off the husband herself. Almost parenthetically, the lawyer remarks that the district attorney decided not to pursue the case, and the film ends with the lawyer and the widow embarking on a new life together. In *Enough* (2002), the resourceful wife stands up to her abusive husband from the start, leaves taking their daughter, and changes her identity several times. When a lawyer advises her that she will never be able to
stop her husband’s harassment through legal channels, she hires a trainer, bulks up, entraps her husband and beats him to death. When she momentarily hesitates to finish him off, he turns the tables and she must finally kill him in self defense. A policeman advises her that she is "one of the lucky ones," and the film closes with happy images of her with her daughter and new boyfriend.

Rather than extending this catalog endlessly, I would like to make several observations about this small sample. Most obviously, the wives are the killers in all of these films. If you relied only on newspapers, t.v. movies of the week, true crime fiction, novels, and films, you would think that women commit murder constantly. Yet women who kill their husbands or partners are relatively rare, despite the fact that they dominate the popular imagination. Available evidence suggests that women are more likely to go on the record as the victims of serious assault or murder than as the perpetrators. While domestic assault is notoriously underreported and difficult to quantify, murder is harder to hide and easier to document. By various accounts, roughly half of the women who are murdered in the United States or the United Kingdom are killed by their husbands or boyfriends. In contrast, as few as four percent of male homicide victims are killed by a current or former wife or girlfriend. One study shows that, in murders between spouses, two-thirds of the victims were wives and one-third of the victims were husbands. According to R. Emerson Dobash and Russell Dobash, "no matter who dies, the antecedent is often a history of repeated male violence, not of repeated female violence." Male violence is at the center of most of these cases of spousal murder, no matter which spouse does the killing.

Thus the centrality of the murderous wife suggests that these films do something other than document what really happens. The story of a man who beats his wife to death, and is charged with manslaughter because a record of beatings suggests that he did not intend to kill her this time, does not command our attention. However, the story of the wife who kills her brutally abusive husband can at least make it to the Lifetime channel. At first glance, this kind of inversion seems unremarkable. Stories of killer women, perennial favorites, are both shocking in their inversion of one set of gender expectations—women are weak, nurturing, nonviolent—and reassuring in their confirmation of another set of equally venerable gender conventions—women are evil, sneaky, and dangerous. Interestingly, the films with which I began do not depict women as monstrous. All of these films have happy endings and insure the suffering heroines a promising future in several ways. First, they evade the charge of male-bashing by including exceptionally sympathetic and helpful male characters, for example, detectives investigating the husband’s murder. Often they gesture toward a future romance between the woman and this rescuer, as a way to reassure us that she has not been
discouraged from heterosexual coupling by having to kill her husband. Second, although anger or passion are traditional and still viable mitigating factors in murder trials, these films, except for *Enough*, muffle the women’s rage. Third, they present the wife’s murder of her husband as inevitable. Because the husband forces her to murder him, he is ultimately the one responsible, and therefore the wife should not have to pay. Thus while these female characters are presented as threateningly active, responsibility is also shifted from them onto various men, both saviors and stalkers.

One might argue that we tell stories of fatal spousal conflict because this reflects how these relationships play out in real life. Reassuring us that these husbands will not blight their wives’ future lives, these endings might be read as a response to research suggesting that women are more likely to be killed after they leave.7 That is, we can only imagine a happy future for these female characters if we know that the husbands cannot reappear. But domestic violence does not invariably end in death. Although the options available to conflicting spouses have changed, the stories have remained similar for centuries in the West, suggesting that spouses in conflict have only one way out of their struggles: dominate or submit, kill or die. Sometimes this binary occurs at the metaphorical level; sometimes it is depicted as literal. Too rarely do these stories imagine that both spouses survive a violent marriage—despite the fact that women and men do leave unhappy unions and form new lives. Murder is a particularly dramatic and decisive way to resolve a narrative. However, stories about women who leave are becoming more common, and are proving to be just as dramatic and compelling as those about women who kill or die. Therefore, the narrative trajectory ending in death still demands explanation.

I argue that many legal and popular depictions of spousal conflict are indebted to a notion of marriage that American culture has inherited from early modern England (1550-1800) and colonial America. This notion assumes that, by entering into marriage, two become one, and the husband subsumes or "covers" the wife. It finds its fullest articulation and most stable institutionalization in the legal notion of coverture, but it both predates and succeeds that legal notion. Obviously, the lived experience of marriage was always more complicated than its usual depictions. Furthermore, the legal force of the notion of the "unity of person" between husband and wife has been gradually, if unevenly, dismantled in both Great Britain and the United States. Still, the assumption that marriage only has room for one full person persists, even as domestic arrangements diversify. I begin by looking at recent debates about battered women who kill their abusers. I then use the present to motivate an inquiry into the past, exploring, in particular, coverture and petty treason in the early modern period.
The Battered Woman
At the level of plot, recent films point to questions at the heart of legal debates about battered women who kill their abusers. Namely, the extent of women's agency in committing a violent crime in response to a history of violence and their accountability for that action. Although debate surrounds the connotations attached to the term "battered woman," little controversy attends whether or not there are "battered women," that is, women who sustain repeated, long-term psychological and physical assault. The question that attracts the most attention is how women's interiority and agency are shaped by an experience that, after all, is summed up as being the object of another's action—"battered." The batterer often disappears from the story, as does a broader political context for domestic violence. Erasing the story that follows from, rather than precedes and defines an identity as "battered," the term itself conveys hopelessness; the battered woman's past defines her identity and determines her future.

The "battered woman syndrome," which was named and defined by psychologist Lenore Walker in 1979, argues that some women who have endured long histories of abuse are so transformed through terror and suffering that they perceive and respond to the world very differently than people who do not share their gender and their experience of abuse. One component of battered woman syndrome, in Walker's view, is what she calls "learned helplessness," that is, an acquired sense that one cannot control what happens or intervene effectively in the course of events. Julie Blackman has said of three severely battered women that "their psyches were fully products of the violence they endured. It is as if there was nothing left—no part of them had been shielded from the ravages of the violence." Examining battered women's statements, Robin West argues that "the redefinition of self as giving in an abusive marriage is the literal death of a woman's liberal subjectivity. She learns to consent for the satiation of the other's desires"; "for the gain of controlling fear, you give up your subjective life." All of these statements present battered wives as psychically erased or murdered by their experience of prolonged domestic violence.

Yet these statements also acknowledge persistent if circumscribed agency. These women learn helplessness, consent to give up their subjective lives. Many feminists resist the notion of a self wholly lost or erased. Who then is left to survive? They argue instead for a more tactical response to trauma. Therapist Judith Herman, for instance, suggests that concepts such as learned helplessness "tend to portray the victim as simply defeated or apathetic, whereas in fact a much livelier and more complex inner struggle is usually taking place. In most cases the victim has not given up. But she has learned that every action will be watched, that most actions will be thwarted, and that she will pay dearly for fail-
ure. To the extent that the perpetrator has succeeded in enforcing his demand for total submission, she will perceive any exercise of her own initiative as insubordination. Before undertaking any action, she will scan the environment, expecting retaliation." From a perspective such as Herman's, insisting that a battered woman is empty or absent colludes in the project of abuse itself, which is often to deny a woman a separate existence, a will of her own.

Critics of the legal relevance of battered woman syndrome question both the origins of the theory—Walker derived her idea of learned helplessness from research that was first conducted with dogs—and its consequences. While expert testimony about battered woman syndrome has led to acquittal for some women, it may have reinforced attitudes toward women that in the long run will impair their chances for equal justice. By emphasizing women's weakness and incapacity, these defenses confirm damaging ideas about women, undermining their claims to adulthood and citizenship. These critiques come from feminists such as Elizabeth Schneider as well as those, such as Alan Dershowitz, who condemn all discussions of prior abuse as legally irrelevant "abuse excuses."

Yet emphasizing the defendant's agency raises its own problems. Some feminist theorists point out that celebrating the murderous wife's agency as a form of resistance to gender inequality and oppression may lead to her conviction and even execution. To view battered women who kill as resistant, in Catharine MacKinnon's view, is to argue that their violence is not determined by the violence that precedes it and also that they should be held individually accountable for their actions. To be constructed as an agent on the condition of death or imprisonment costs too much. MacKinnon claims that when battered women kill, they are still acting within a defeating logic. "I think it parodies autonomy to say that someone pushed to the wall who lashes out and is imprisoned for life as a consequence acted autonomously, even in the single moment of lashing out. It ignores why she needed to act and what she paid for it, neither of which she chose."

In contrast to those who praise or blame a battered woman syndrome defense, other feminist legal theorists emphasize that battered women should not be viewed as "a separate class of defendants" who require legal reforms to accommodate their circumstances. Expert testimony about battered woman syndrome was originally imagined to help judges and juries understand why, given her experience, a battered woman might have acted reasonably in perceiving her husband as an enemy who required counter-attack with extreme force. By this logic, testimony does not then excuse or justify her conduct, but rather helps to explain it as the action of a person constituted rather than erased through violence who, therefore, reasonably uses violence. But this approach is in itself threatening.
Legal discussions of domestic violence and its redress remains focused on the woman. As one critic points out, "[r]ather than examine standards of conduct that allow the aggressor to behave as he has, we must instead examine our client's actions to see whether she is a worthy victim." A "worthy victim," whose story will be most compelling to judge and jury, invites sympathy and protection through her helplessness. Women have gained protection from domestic violence and have earned acquittals when they retaliated against their abusers, largely to the extent that they have been acknowledged as victims. In both England and the United States, the depiction of women as the suffering victims of male brutality helped fuel attempts by organizations such as the Society for the Protection of Women, Societies for the Prevention of Cruelty to Children, and the Women's Christian Temperance Union to have legislation enacted that would impose harsher penalties for wifebeating. These protections were not without their costs for both women and men. Men, especially working-class men, were more subject to surveillance and control, while women had to appeal to one kind of male authority (the courts) for protection against another (their husbands). They were most likely to get this "protection" if they emphasized their own weakness and dependency, rather than demanded freedom from domestic assault as a right.

Many argue that this stress on women's victimization has gone too far with, on the one hand, the feminists discussed above emphasizing a strategic response to trauma, and, on the other hand, some researchers insisting that men are often the victims of domestic violence. Work such as Suzanne Steinmetz's controversial essay, "The Battered Husband Syndrome," confers on women a kind of equality. They "give as good as they get." However, such studies have been widely criticized for paying too little attention to the outcomes of the violence. Male violence often does more damage. The fights may not be one-sided, but the husbands usually "win" because they are bigger and/or stronger.

Elizabeth Schneider argues powerfully against the insistence that women must be either innocent victims or guilty agents. In the view of judges, lawyers, and juries, she writes, "A battered woman supposedly cannot be victimized if she has acted in any way that suggests agency or if she is a survivor; in contrast, if she is a victim, she cannot be considered reasonable." Still, as Schneider insists, "battered women who kill are simultaneously victims and agents; they are abused but they also act to protect themselves." Yet the binary logic lingers and is often invoked at women's expense. Many popular justifications of "women who kill" remove the woman from intention, motive, calculation, and accountability in the period leading up to and during her murder of her abuser, then argue that she becomes a full and autonomous self by means of murder. Thus, the batterer is responsible for the woman's act, but after she has
committed it and eliminated him, she emerges as an agent and reclaims the subjectivity she is understood to have lost in the course of the relationship. As Donald Downs summarizes: "Up to and including the fateful act, the defendant is defined as an extension of the oppressor; only after this act is he or she an independent self capable of self-determination." The transitional moment—the act of aggression through which the torch of personhood is seized—poses a conceptual conundrum. If a "battered woman" has been beaten into doing anything to please, or at least not provoke, her abuser, if she has been forced to suppress her will and her desires, then how does she come up with the idea to kill? As Mark Kelman puts it, "her act—killing a perceived oppressor—could hardly be seen as the introduction of the oppressor's desires." The logical slights of hand in many of these discussions occur largely because of the need to treat women as agents while shielding them from criminal accountability. The effect of the claim that a battered woman emerges fully into a responsible and rational self after she kills but not as she kills is to suggest that marriage entails an economy of scarcity with regard to interiority and agency. While the husband is alive, he monopolizes full personhood. When the wife kills him, she can usurp that personhood—stand in his shoes, wear the pants. The emergence into selfhood through violence is precisely what we see in countless early modern texts, in which the decision to kill is a wife's first self-owning act, in part because recognizing herself as separate from her husband is construed as conceptually violent in itself. These limited options—die or kill—and the economy of scarcity with regard to agency assumed to operate within marriage, are both the legacy of coverture, the common law construction of married women's legal status.

**The Feme Covert**

Under common law in the early modern period, an unmarried woman (or feme sole) had approximately the same legal rights and responsibilities as a man; she could own and sell property, bequeath her property by will, make contracts, sue and be sued. In consenting to marriage, a woman conferred many of these rights and responsibilities onto her husband who exercised them for her, presumably in the best interests of both, and with the assumption that they would never conflict. Marriage thus transformed two independent legal agents into one agent—the husband—by means of the husband's "subsumption" of his wife into himself. In this process, the wife became a feme covert, meaning that she was figuratively "veiled, as it were, clouded and over-shadowed." As a consequence, she had the legal status of "either none or no more then halfe a person." Her husband, in turn, became an enlarged person with broadened powers. Thus coverture refers both to the many restrictions imposed on married women under the common law and to the idea of the
wife as under her husband’s cover, that is, both protected and obscured.

There are many formulations of coverture. Although it oversimplified common law and overstated its significance within the broader and evolving landscape of English law, William Blackstone’s eighteenth-century articulation became highly influential in both England and America. By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-french a feme-covert, foemina viro co-operta; is said to be covert-baron, or under protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture. Upon this principle, of an union of person in husband and wife, depend almost all the legal rights, duties, and disabilities, that either of them acquire by the marriage.4

In theory, a feme covert’s conditional state was ended, and her legal existence reanimated, when her husband died, abjured the realm or was banished, or deserted her. A married woman also emerged into legal accountability through committing a felony. Whereas a married woman was not liable for most misdemeanors, she stood accountable when she committed a serious crime on her own. This is one legal reason why the murderous wife is so culturally visible. Her felony and her husband’s death simultaneously un-cover her. Thus even at the theoretical level, the wife’s legal agency is understood as suspended, covered, or delegated rather than as erased. When the cover is gone she can pop back into view.

It has sometimes been argued that under coverture marriage not only granted the husband control over his wife’s property but also made the wife into her husband’s property. After all, in the Book of Common Prayer marriage ceremony, the father gives the bride to her husband “in a silent but potent symbolic transfer of authority”; the wedding ring, which the bride wore but the groom did not, could also be viewed as "a tag, a mark of ownership" or "a symbol of purchase." The husband’s supposed ownership of his wife was also manifested in his sexual access to her and his right to sue her lover for "criminal conversation." Yet the logic of the corporate legal personhood of husband and wife is that the two become one person not an owner and property.

Furthermore, beneath the legal fiction of coverture, married women achieved considerably more control of property than was once thought. In their magisterial nineteenth-century history of English law, Frederick Pollock and Frederic Maitland acknowledged that "we cannot, even within the sphere of property, explain the marital relationship as being simply the subjection of the wife to her husband's will. He constantly needs her concurrence, and the law takes care that she shall have an opportunity of freely refusing her assent to his acts." Wives managed their moveable goods, a significant form of wealth in the early modern
and colonial periods. Records of women's litigation, especially in equity courts, suggest that married women of widely different social status asserted a right to maintenance and to some control of the property they brought into their marriages. Although devices such as uses, trusts, and jointures "usually released women from the shackles of coverture only by transferring reliance on husbands to reliance on family members or trustees," they did enable women to protect their interests and to curb their husbands' "wholesale rights of bounty and possession." 

While the material constraints imposed on wives by coverture could be crushingly real, the notion that husband and wife became one person was always understood as a strategy "designed to overcome (in the husband's favour) the dilemma of who should have legal responsibility within the partnership of marriage" and as a legal fiction to which there were exceptions in both theory and practice. Lawyers and judges used marital unity as a legal fiction, that is, as a set of imaginary 'facts' created to achieve a legal result. It was a tool, not an explanation: existing only for particular purposes, to be discarded when no longer useful. Furthermore, married women always acted as "deputy husbands" who took their spouses' absences as opportunities to act in their stead; as "fictive widows" when their husbands "for one reason or another, were unwilling or unable to govern them"; as helpeets who had to engage in financial transactions in order to fulfill their duties as "housewives"; and as domestic managers. According to nineteenth-century American jurist Tapping Reeve, for instance, despite her "suspended" existence, we find the wife "often an active agent, executing powers, conveying land, suing with her husband, and liable to be sued with him, and liable to punishment for crimes." Literate women's diaries and letters reveal that many women did not experience themselves as erased or subsumed. Finally, coverture protected women as much as it constrained them, helping to make "the structured inequality that was marriage morally acceptable" by requiring the husband to provide for and protect his wife. However, my focus here is not what women actually felt or did, which exceeded the bounds of coverture, but rather the contradictions within the idea of unity of person and the extended reach of that idea. Precisely because it always was a fiction, the story of marital unity could survive its contraversion in practice and its demise as law.

Coverture was never the only way of imagining the legal relation between husband and wife. In England, it was contradicted and qualified outside of common law, which coexisted with other distinct legal systems. The restrictions of coverture with regard to property could often be evaded via equity law through the Courts of Chancery and Exchequer. As Margaret Hunt argues, because equity courts "were capable of recognizing that husbands and wives might have separate and antagonistic interests, they quickly became the venue of choice for settling many kinds of
marital disputes." Even at the level of legal theory, jurists struggled to come to terms with "the contradictory presence of the independent female human being in the unitary legal fiction of the matrimonial couple," although their attempts were uneven and slow. Outside of England, coverture was not usual, and in the American colonial courts it had to vie with the legal systems familiar to immigrants from other countries. Some historians argue that the common law became more influential later when the colonies sought closer connections to England and aped English fashions. Ultimately, coverture was gradually dismantled, as jurists in both countries moved to curb powers that were abused, especially with regard to property. In England, the Married Woman's Property Act of 1870 enabled a working woman to control her own earnings; by 1882, married women approximated single women's (or men's) control of property, but only for separate rather than marital property. In the United States, most states passed acts granting married women control over their own wages and their separate property by the late-nineteenth century. Given that coverture never was "the only law in town," it is especially telling that it had such enduring and far-reaching imagi- native resonance.22

Paradoxically, as Hendrik Hartog shows in his study of separation cases in nineteenth-century America, "courts were precisely the arena where a wife's separate identity was most easily and commonly recognized. Legal doctrine created coverture. Legal processes provided public recognition of the separate legal identities of wives." The process of contracting a separation redefined the wife:

The act of drawing up an individual contract would have given a wife a sense of herself as an individual with individual needs and wants and an individual history. . . . In place of the nearly unbounded relationship of husband and wife, in which a wife might experience herself as open to her husband, as unable to resist or control his power, a separation agreement posed a limited and mutually agreed-upon list of rights and duties. . . . A separation was thus, regardless of its ultimate enforceability, an enormously important performance.

The increasing availability of separation agreements and then divorce actually helped to define marriage more clearly, so that the ideal of "unity of person" was most fully articulated in the face of its dissolution; subsequently, in "the imagined world of casebooks" in the 1890s, coverture was redrawn as a nostalgic back-formation, an exaggerated view of the powers men used to have. Even the changes in women's legal status were often understood within "a zero-sum universe where what husband had, wife did not, and vice versa," a universe operating under the logic of coverture. Thus "wives were understood as having gained public rights that necessarily meant losses of rights for husbands."23

Coverture not only set the conceptual contours of married women's domestic role and legal status but also their relation to public life, which
was understood as less important than their obligations to their families and households. Through a system of analogies between the household and commonwealth, as the husband stood subject to his king, so the wife stood subject to her husband. But did this mean that the wife was doubly subjected, or did her subjection to her husband somehow eclipse her relation to her sovereign? Writing in the mid-seventeenth century, Margaret Cavendish suggested the latter:

And as for the matter of Governments, we Women understand them not; yet if we did, we are excluded from intermedling therewith, and almost from being subject thereto; we are not tied, nor bound to State or Crown; we are free, not Sworn to Allegiance... and if we be not Citizens in the Commonwealth, I know no reason we should be Subjects to the Commonwealth: And the truth is, we are no Subjects, unless it be to our Husbands, and not always to them, for sometimes we usurp their Authority, or else by flattery we get their good wills to govern.

Cavendish here tellingly claimed that what authority women have they "usurp" from their husbands. She pointed to women's enslavement, while softening that insight by claiming that nature granted women beauty so that they could "oftener inslave men, than men inslave us." Women's situation was more ambiguous than she admits. For instance, uncertainty surrounded whether married women should swear oaths separately from their husbands. But Cavendish accurately articulated the way in which women were related to the state through their husbands. The priority placed on women's domestic responsibilities was sometimes understood as a freedom from obligation, sometimes as a denial of rights—or, as in the above passage, as both.

According to Linda Kerber, "from the era of the American Revolution until deep into the present, the substitution of married women's obligations to their husbands and families for their obligations to the state has been a central element in the way Americans have thought about the relation of all women, including unmarried women, to state power." Married women's citizenship was often determined not by birth but by marriage. As of 1870 in Great Britain and 1907 in the United States, women who married aliens lost their citizenship, no matter where they resided. In turn, as freedmen and male immigrants slowly claimed the entitlements of citizenship, they often did so at the expense of their wives' claims to citizenship.

Women did not, of course, accept this situation without protest. In the course of revolutionary changes in both countries, many women asserted that wives had as great a right to resist tyrannical husbands as male subjects had to resist tyrannical rulers. In 1776, Abigail Adams famously urged that husbands' privileges be curbed, "Remember all Men would be tyrants if they could." Men, too, made these arguments. "Revolutionary" events from 1536 to 1776 could be seen as precedent-setting
divorces: of the Church of England from the Church of Rome, of Parliament from the King, or of the colonies from England. John Milton and Thomas Paine, both estranged from their wives, argued that imprisonment in unhappy marriages restricted the very independence for which they were writing and fighting. Yet Milton and Paine both emphasized the importance of men's liberties, especially with regard to escaping unsatisfying marriages. As Mary Astell pointed out in England in 1700, even the most radical men ultimately retreated from extending revolution to gender roles. "How much soever arbitrary power may be disliked on a throne, not Milton, . . . nor any of the advocates of resistance, would cry up liberty to poor female slaves or plead for the lawfulness of resisting a private tyranny." Furthermore, marriage proved highly adaptable as a model for political relations precisely because of its contradictions. It was a model of hierarchical yet affectionate relations, as well as of contractual and egalitarian ones. As a consequence, the idea of marriage might be mobilized to distinctly different political ends.

During the seventeenth and eighteenth centuries, "the mere subject, bound by, and governed through, personal loyalty to monarchs and lords, and tied into a network of kinship, would be replaced by equal citizens who consented to be governed, and enjoyed rights, including the right to participate in government"; women, however, even those who actively participated in the political processes of rebellion, did not earn these new rights and obligations. Rather than being wholly excluded, they were included on different terms. Yet women's relations to political life in England and America from 1600-1800 were more diverse than we once thought. Recently, scholars have shown that women had an early potential for political engagement—left open by omission in theory, if not often manifested in practice—that was later defined out of existence as a public sphere they helped to shape was closed against them. At the same time that women's relation to the state was restricted by being more clearly defined, women also gained symbolic prominence in the iconographies of public life and crafted unthreatening roles for themselves, such as the Republican Mother or the Republican Wife, that allowed them access to civic participation.

Changes in women's relation to the state and to public life would happen more subtly than through an immediate extension of revolutionary political principles to domestic life. In that process, many early feminists insisted that the position of the wife was analogous to that of the slave—a person excluded from political membership and self-ownership. One supporter of both abolition and women's suffrage put this particularly bluntly. For Emily Collins, the "stultifying effect of subjection, upon the mind" of women was "exactly paralleled by the Southern slaves." This analogy obviously obscured crucial differences between white wives, who, to the extent that they were ever viewed as property, were inalien-
able, and slaves who were freely bought and sold. It was also available to apologists, who could defend slavery by analogy to other relations of dominance and subordination in the household. Yet this analogy enabled feminists to state their case boldly and to argue that the available terms for describing political status did not apply to married women. Feminist abolitionists could also displace their discussions of free women's circumscribed ownership of their own bodies in marriage onto the figure of the slave woman vulnerable to sexual assault.  

If, as Carole Pateman puts it, "criticism of the rule of husbands as despotic, absolute monarchs over their wives, is one of the central themes in feminist political argument from the early modern period onward," this insight that the "personal is political" was not wholly new. Instead, it was based in the same analogy between the household and the commonwealth that sometimes limited women's civic role to the family. This analogy also made wives' obedience a cornerstone of all social and political order. Although it was only gradually acknowledged that husbands could be tyrants, it had long been feared that wives could be traitors.

**Running from Cover: Petty Traitors**

A statute of 1352 (25 Edw. 3) acknowledged the special threat of the murderous wife by distinguishing her crime from other murders. This statute defined killing one's husband as petty treason, that is, as analogous to high treason—any threat to or assault on the monarch and his or her government. When servants killed masters, or curates the ministers, under whom they served, they might also be charged with this aggravated form of murder. In each of these cases, the murderer is "one that is in subjection, and oweth faith, duty, and obedience, to the party murdered." Although there was some dispute, if a female servant killed her mistress her crime might also be considered petty treason. According to Blackstone, even a legally separated wife could be found guilty of petty treason because "the vinculum matrimonii subsists" between the spouses; similarly, a servant who has left a master and kills him "upon a grudge conceived against him during his service" can be guilty of petty treason because "the traiterous intention was hatched" under relations of both intimacy and subordination. The "violation of private allegiance" defines the crime. Women convicted of petty treason were sentenced to the same punishment as those convicted of high treason; they were burned at the stake. The law thus conferred on this "domestic" act enormous political significance. Some notorious murderous wives were burnt as late as the eighteenth century; not until 1790 did the female traitor's punishment become hanging rather than burning in England. Petty treason was not formally abolished as an offense distinct from murder until 1828.

Although petty treason remained in American colonial statutes, it
was not much enforced with regard to wives. For Kerber, the reluctance to prosecute murderous wives for petty treason reveals a tacit recognition that "the fact of women's citizenship contained deep within it an implicit challenge to couverture." Catherine Bevan may have been the only white woman to be burned at the stake for petty treason in colonial America (in 1731). The punishment for petty treason was more often used on servants and slaves. Most notoriously, Paul Revere, on his famous ride to Lexington, passed the body of Mark, a slave convicted of petty treason and hanged in chains twenty years earlier (in 1755). Phillis, the female slave with whom Mark had allegedly conspired to poison their master, and who was burnt at the time that he was hanged, was not on display. Bodiless, she does not have even Mark's rather ignominious place in history. In America, petty treason laws were first intensified in their application to slaves in the eighteenth century and later repealed state by state in the nineteenth century.\textsuperscript{33}

In early modern England many texts about petty treason circulated. I focus on those that link the wife's violence to a history of contention and abuse. Although these texts presented this history as reflecting badly on the husband and setting the limits on his authority, they were reluctant to present this history as in any way mitigating a murderous wife’s guilt. During this period, as various scholars have shown, men's use of violence in the household was being questioned and monitored. As long as a male head of household did not kill, maim, or seriously endanger his subordinates, or disturb his neighbors, he was not legally accountable for how he treated those in his care. Because he stood responsible for his subordinates' conduct, he could use reasonable force, when necessary, to keep them in line. What constituted reasonable force or "moderate" correction was, of course, uncertain. Furthermore, a wife was not quite the same as apprentices, servants, or children. She occupied a double position as both an authoritative mistress and a subordinate. Although a wife's misbehavior might sometimes require that she be treated like a child, that is, beaten, in most cases "that small disparity which . . . is betwixt man and wife permitteth not so high a power in an husband, and so low a servitude in a wife, as for him to beat her." From the pulpit and in print, ministers and preachers stepped into this gray area to negotiate the limits on a husband's power to use force to discipline his wife. The discourse they produced prescribing domestic conduct was usually published in England but circulated in the colonies as well, arguably creating a shared culture of print if not necessarily of conduct.\textsuperscript{34}

Early modern reformers did not argue that the husband had no right to beat his wife nor that his doing so was unfair, immoral, or illegal. Instead, they argued that refraining from violence was more dignified, authoritative, and expedient than resorting to it. Thus, in contrast to arguments that wifebeating in the nineteenth and twentieth centuries
was "instrumental," a successful way to achieve domination and control, these reformers argued that wifebeating does not work. In a hefty collection of his sermons on "domesticall duties," William Gouge, a popular London preacher, warned that because a wife has "no ground to be perswaded that her husband hath authority to beat her," his doing so will lead her to "rise against him, over-master him (as many do) and never do any duty aright." Such a critique of wifebeating presents it not as morally wrong but rather as ineffective because it divides husband from wife rather than binding them more closely together.

The argument is also made that a husband should not beat his wife because "they two are one flesh" and "no man but a frantike, furious, desperat wretch will beat himselfe." By this logic, the husband's conceptual subsumption of his wife grants him more authority and motivation to protect her and renders him less liable to hurt her. For instance, in A Bride-Bush: Or, a Direction for Married Persons, a collection of sermons that went through seven editions by 1800, the controversial Oxfordshire preacher William Whately argued that loving and caressing a wife's body and inflicting it cannot go together. "With what face can he come to kiss and embrace the same person whom he hath laid upon with his fist, or with a cudgel? How doth he cherish her as his own flesh, whom he thus opprobriously putteth to grieve and smart?" In his Apologie for Women, vicar William Heale used the language of love poetry to suggest the absurdity of bruising one's wife. "Who could quarrel with her cheekes so purely mixt with Lilies and Roses? . . . Who could not imagine those ivorie armes fitter for imbracing then buffeting?" Henry Smith, a popular London preacher in the late-sixteenth century, put it more bluntly. "Her cheeks are made for thy lips, and not for thy fists." Whately, Heale, and Smith did not acknowledge the complex eroticism of violence, nor the ways in which it might emerge from intimacy itself. As Gouge argued, a wife is more vulnerable to abuse than a servant because she sleeps in her husband's bed, she has no redress against him, and, perhaps most of all, because he can inflict greater emotional damage than a master could. "The neerer wives are, and the dearer they ought to be to their husbands, the more grievous must stroakes needs be when they are given by an husbands hand, then by a masters."

The notion of husband and wife as "one flesh" could also offer a justification for physical chastisement as a form of self-care—"a sharpe medicine for so festered a sore." As some writers pointed out, men did injure themselves in the course of some medical treatments. Whately offered the most sustained and ambivalent endorsement of this approach.

But for blowses, for strokes with hand or fist, nothing should drive an husband to them, except the utmost extremities of unwifelike carriage, unless shee bee peremptory and wilfull in cursing, swearing, drunkennesse, &c; unless shee
raile upon him with most violent and intollerable termes; unlesse shee out-face him with bold maintaining, that she will doe as she doth, in despight of him; unlesse she begin the quarell, and strike or offer to strike; an husband no doubt should hold his hands, and not forget himself to be an husband, till she have cast off all shewes of remembering her selfe to be a wife: but if such extreme putrefaction shall fall out in any mans case, I see no cause of forbidding to cut or seare ones owne most tenderly beloved flesh.

The exceptional circumstances under which violence was justified side-tracked Whately, who listed them in passionate detail. Yet throughout his lengthy discussion of wifebeating, a more vexed topic for him than for some writers, he returned to his insistence that these brawling spouses share one flesh. "The husband must ever remember, to use no more roughnesse, than is fit to his owne flesh." "To strike ones wife, is to make an incision into his own flesh." Whately confided that he has been reluctant to authorize "the lawfulness of an husbands using such a medicine." But he decided that, even if this remedy could be abused, it must be made available to those husbands in desperate straits who have tried everything else. Unable to leave the topic, Whately repeatedly succumbed to the temptation to list the offensive behavior by which wives provoked their husbands. Yet he did not want to endorse "the mad violence of ... tyrannous husbands." Throughout, Whately addressed the ambivalence that defines his text through the image of the physician. "There is great difference betwixt the carriage of a tender-hearted (though resolute) Chirurgion, comming to cut off the arme of his patient (because the whole body must else perish), and of a valiant soouldier in the field, fighting with his foes, and cutting off their legs and armes." 37

The wife, as patient rather than foe, loses one limb but not all four.

Gouge countered Whately's analogy to the physician by pointing out that most men could not administer painful remedies to themselves but must instead submit to a physician's help. As a consequence, Gouge advised that a particularly recalcitrant wife should be handed over to a magistrate to be beaten so that "shee may feare the Magistrate, and feele his hand, rather then her husbands." William Perkins, a respected and popular teacher and preacher as well as a prolific writer, similarly advised, "Nevertheless, if she grow to extremities, and be desperately perverse, so as there be no hope of amendment, then the Magistrate may be informed; who to prevent scandalls, and to provide for publike peace, both ought and may assigne unto her necessary correction, and punishment according to her desert." For Gouge and Perkins, any violence against a wife should not be "domestic" unless the wife forces her husband to act in self-defense. This notion was briefly enacted into law in Massachusetts, where the "Body of Liberties of 1641" advised that "Eve-rie married woeman shall be free from bodilie correction or stripes by her husband, unlesse it be in his owne defence upon her assault. If there
be any just cause of correction complaint shall be made to Authoritie assembled in some Court, from which onely she shall receive it." The "Body of Liberties," like Gouge's and Perkins's proposals, attempts to displace the husband's discipline onto magistrates, so as to redefine the husband's role as a more loving and equitable one.

Yet recourse to the magistrate also exposed the husband to greater surveillance and regulation. Convincing men to police themselves was an important, if not necessarily successful, step in the reform of manners with regard to wifebeating. As greater responsibility was placed on men as providers and protectors, some men—such as working men in the cities or recently freed slaves—became particularly vulnerable to the charge that they abused their authority or failed in their responsibilities. Wifebeating became a way to distinguish a person, a class, a race, or a nation from others; it was persistently constructed as a practice of the past, of the lower classes, of immigrants, of other countries or peoples. The reformation of manners thus asserted that there was a conceptual limit on a husband's power over his wife, while also announcing that limit as variable and negotiable.

The increasing scrutiny of domestic conduct gradually thickened the barriers of the household and set it off as more separate, chary of surveillance, and shamed by lapses from the emerging standards of conduct. The consequent isolation might have made at least some women more vulnerable, since a network of informal surveillance had earlier discouraged husbands from abusing their power. Those who intervened most often—to complain to husbands, to protect women, to come into court—were other women. When women sued for separation on the grounds of cruelty, they were most likely to bring other women as their witnesses. Women were not only protected by other women's watchfulness, of course. Women also policed other women, censuring their adultery, nagging, and violence. When shaming and scrutiny weren't enough, neighbors might play important roles in getting a couple into court or in testifying. In England, church courts meted out fines or imposed separations between husbands and wives. In New England, justices did so as well; in addition, they sometimes sentenced those found guilty of spouse abuse to whippings, although they imposed this sentence more often on abusive wives than on husbands.

In short, while it is impossible to tell whether the rate of physical violence in the household actually changed, prescriptive literature was constructing wifebeating as a failure of control, a lapse in good household government, a derogation rather than an affirmation of manhood. The printed accounts of petty treason that interest me here make most sense in the context of this reform of domestic conduct. Many of these texts narrate a history of domestic violence preceding the murder and present this history as reflecting badly on the husband. In The Adultresses Funer-
al Day, Henry Goodcole, minister of Newgate, described the violent marriage of a couple, "shee being young and tender, he old and pevish." The husband "used not onely to beat her with the next cudgell that came accidentally unto his hand, but often tying her to his bed-post to strip her and whippe her, &c." Goodcole concludes that "Her injuries, and harsh and unmanly usage spurred on by the instigations of the divell, almost compeld her to what she did." He then proceeded to tell the story of Alice Clarke's relation to her husband, Fortune. When Fortune, justifiably angry at his wife's infidelity, "outragiously" falls from "words unto blowes with his wife, the smart whereof she feeling, incontinently begot in her dislike, and resolution of revenge on her Husband Clarke for the same, a fit humour for the devill to worke on." When Fortune finds his wife with her lover, "he freshly fell foule upon her, and so cruelly added blowe upon blow upon her body, that the markes thereof were very visible on her body at this present," that is at the time that she is apprehended and examined for killing her husband. Goodcole suggested some connection between those bruises and the murder but cannot articulate exactly how the law might account for it. Another pamphlet about a murderous wife, A Warning for Bad Wives, explains that Sarah Elston and her husband "had been married several years; but lived with much Discord and frequen Wrangling: of which some now would partly excuse the woman, and alledge the man as the principal Cause of their Differences by his ill husbandry, cross carriage, ill company, and other provocations, not here to be mentioned. Others gave Evidence that she had threatened his Life several times before." Despite the stern moral condemnation of these pamphlets—The Adulteresses Funeral Day, A Warning for Bad Wives—they do grant some significance to the couples' violent history and the women's bruises. Yet, having acknowledged the women's victimization, they come down squarely on the side of their agency and accountability. Each wife's bruises "almost" or "partly" excuse what she does, but not quite.

Accounts of a notorious murder vividly articulate how early modern culture both recognized and could not assimilate the relevance of past abuse to husband murder. Mary Hobry was a French, Catholic midwife who emerged into prominence in late January 1688 when the head, torso, and limbs of her husband Denis were discovered one by one around London: his trunk on a dunghill in Parkers Lane, his limbs in a House of Office (or privy) in the Savoy, his head in a vault (a cellar or crypt) near the Strand. Body parts usually provoke speculation and alarm. These body parts immediately became a focus for the anxieties surging through London at a time of particular upheaval, anxieties that often attached to those who, like Mary Hobry, were both foreign-born and Catholic. Pamphlets, broadsides, ballads, and even playing cards all depict Hobry's crime and punishment.
The reassembled body was displayed in the St. Giles "bone-house," in the hope of determining the victim's identity. Once he was identified as Denis Hobry, his wife Mary was apprehended at the house of one of her clients. At the time of the murder, Mary had been married to Denis for four years. She pled guilty at her arraignment for petty treason and murder at the Old Bailey and was burnt to death.

The fullest account of the events appears in *A Hellish Murder Committed by a French Midwife, on the Body of her Husband, Jan. 27, 1687/8* (London, 1688). Other printed versions seem to have been based on this lengthy pamphlet. Because Hobry confessed to her crime, and there was no trial, Roger L'Estrange, a Tory propagandist, was concerned that there would be no published account to counter the many rumors circulating about the crime, especially those attaching political significance to it. Therefore, L'Estrange assembled and published what he viewed as the case against Hobry including the sworn testimony of numerous witnesses taken before him as investigating magistrate and her own detailed "confession," that he secured in a private interrogation with the help of a translator.

All accounts of the murder suggest that the marriage had been contentious and violent. The couple "lived together in continual strife." They fought about Denis's extravagance, especially his seizure and waste of what Mary earned through her "industrious Care" as a midwife; his drunkenness and dissolute life, which Mary claimed had infected her with a sexually transmitted disease; and his insistence that she "submit to a compliance with him in Villanies contrary to Nature." The couple alternated between separations, when Denis returned to France, brief reconciliations, during which he would promise to amend his ways, and open hostility. Whenever they lived together, Mary's life was in danger. In L'Estrange's account of her examination, Mary claims that, at one point, she made Denis sign a declaration before a priest and witnesses that "he would be another Man." Yet he did not become a new man, and the conditions under which Hobry lived are presented as promoting violence: "This Informant finding herself without Remedy, in a Distraction of Thoughts, and under the Affliction of Bodily Distempers, contracted by her said Husband's dissolute Course of Life, her Frailty was no longer able to resist the Temptations of dangerous Thoughts." As a consequence, "finding herself in this hopeless Condition, and under frequent Temptations of putting some violent end to her Misfortunes," she was tempted "to think of Extremities either upon her Husband or upon Her self." Although the text is presented in the third person, Mary Hobry's dialogue with her husband is quoted as are her thoughts; most of her "I" statements respond to provocation and articulate resistance and violence. "[t]his Examinate spake to her Husband to this effect: Hobry . . . if you Treat me as you did formerly, I do not know what
Extremities you may Provoke me to." Yet, as we have seen in other seventeenth-century accounts of petty treason, a history of abuse cannot be taken as justifying or even explaining a wife's murder of her husband. In A Cabinet of Grief, Mary Hobry is twice made to say that her husband's abuse is no excuse: "but yet the sorrows and sufferings that I underwent I own to be no Argument that I should make my self guilty of his Blood." "Though he to Wickedness was bent,/and show'd himself so cross and grim,/I own this was no Argument/that I, alas! should Murder him."  

In her examination as presented in A Hellish Murder, Mary Hobry recounts several moments when she contemplates murdering her husband and openly threatens him. On the night of the murder, her husband "attempted the Forcing of this Examine to the most Unnatural of Villanies, and acted such a Violence upon her Body in despite of all the Opposition that she could make, as forc'd from her a great deal of Blood." By presenting Denis's sexual demands on Mary as "unnatural," "villainous," and violent and as a catalyst to his wife's violence, A Hellish Murder emphasizes how he oversteps his authority and creates the conditions for his wife's transgression. Perhaps it was easier to depict a foreign husband with "unnatural" sexual appetites as so inflating himself that his subsumption of his wife—his unrestricted access to her earnings and her body—threatened her obliteration. As A Hellish Murder presents it, Mary Hobry's testimony aligns her sense of self with her rage and her decision to fight back against her husband's excessive and destructive demands. In the "winner-take-all" situation created by Denis, Mary can only articulate and assert a self against him through violence. After Denis rapes her, beats her, and bites her "like a dog," Mary asks him, "Am I to lead this life for ever?" to which he replies, "Yes, and a worse, too, ere it be long, you had best look to your self," and upon these words he fell asleep. Upon this Respite the Examine lay in Torments both of Body and of Mind, thinking with her self, 'What will become of me? What am I to do! Here am I Threatned to be Murder'd, and I have no way in the World to Deliver my self, but by Beginning with him'; and immediately upon these Thoughts, this Examine started up and took one of his Garters. . . ."  

Mary then lops off the extremities of the man who drove her to "extremities," subjecting him to treatment curiously resembling the dismemberment of traitors. In asking "what will become of me?" Mary Hobry, as L'Estrange presented her, imagines herself as not only separate from but in conflict with her husband. To preserve her own life, to achieve her own future, to deliver herself, she must "begin with," that is, murder, him.

Having recounted Hobry's story in grisly detail, L'Estrange yet retreated from claiming it cast her conduct as reasonable or as self-defense. "In the Womans Story, I have done all the Right that Honestly I could to the Compassionate Condition of an Unhappy Wretch, but
without Extenuating the *Horror of the Wickedness.*" He goes on to say that his subsequent inquiries confirm that Denis Hobry was "a *Libertine and Debauchee to the Highest Degree,* but *Drunk or Sober,* without any *Malice.*" This claim that Denis Hobry lacked malice certainly runs counter to his wife's portrayal of him in her examination.

The details of Mary Hobry's story are gory, and the process by which her crime came to be widely represented and invested with political meaning was complex. Still, I take Hobry's formulation—"I have no way in the World to Deliver my self, but by Beginning with him"—as a summary of sixteenth- and seventeenth-century English representations of murderous wives. A wife in one pamphlet decides that "she should never be in quiet until by some way or other she were shifted of him"; a battered wife in another "weary of so wretched a life, which she would have bin glad to be rid off, and loath in her modesty to acquaint any friend or neighbour with her desperate purpose . . . pondered with her selfe how she might end both their lives by poyson." Ambivalently, she, too, decides to "begin with him." As the wife in each of these texts articulates herself as having a life distinct from and in competition with her husband's, she both asserts a self and manifests this self as violent and criminal. The logic shaping these accounts resembles that shaping the depictions of the battered woman's sense of her alternatives and assertion of herself against her husband.

The options for Hobry and other battered women in early modern England were understood as so fatally limited—kill or die, me or him—because there were so few real ways out of marriage. In England until the nineteenth century, divorce was harder to obtain than in any other Protestant country. As a consequence, the ways out of marriage remained fairly consistent before and after the Reformation, for Catholics and for Protestants. Marriages could be annulled but only on limited grounds (such as bigamy or nonconsummation). Church courts could grant separations, but these did not free women from the restrictions imposed at common law by coverture and did not enable the separated spouses to remarry; furthermore, some husbands were remiss in paying the mandated maintenance to their wives while others exploited coverture to gain control of their estranged wives' earnings. Women sued more often for separation than men did, and their grounds were distinctly gendered; men accused their wives of adultery while women accused their husbands of cruelty. Women's suits alleging men's violence were considerably less successful and declined in the course of the seventeenth century, perhaps because cruelty was difficult to prove. According to Martin Ingram, because wifebeating was not exactly illegal, "the church courts had perforce to interpret cruelty in a strict sense; and plaintiffs normally claimed that they had suffered abuse sufficient to endanger their well-being or even their life." In the 1690s, Parliament granted what were ar-
guably the first true divorces, that is, allowing for remarriage, but this
option was available only to peers on grounds of their wives’ adultery.
Desertion was often an unofficial solution to irreconcilable differences,
but it was hard on women, especially those with children, because it left
them without financial support. As a consequence, men tended to desert
their wives more than wives did their husbands. Yet mortality rates were
sufficiently high that, as Lawrence Stone and others have argued, death
often did the work then that divorce does now in cutting marriages
short.48 Even those spouses who refrained from giving mortality a little
push—with some ratsbane or a garter—must sometimes have greeted the
death of a spouse with, shall we say, mixed emotions.

As in England, in colonial America "disease, disaster, and old age were
more likely than the courts to release a woman from an unsatisfactory
union."49 Yet divorce was far more widely available in America than in
England, at least in those colonies that viewed marriage as a contract
broken by the misbehavior of one of the spouses. In New York and Vir-
ginia, divorce was available on roughly the same terms as in England.
South Carolina did not grant divorces. But the colonies of New Haven
(before it was absorbed into Connecticut), Connecticut, and Massachu-
setts Bay heard divorce petitions on the grounds of adultery, male im-
potence, and confirmed desertion as early as the 1630s, and granted full
divorces that allowed for remarriage; in these colonies, the majority of peti-
tioners were women. Connecticut maintained an especially liberal di-
 vorce policy and heard petitions based solely on cruelty. "Cruelty" was
strictly defined as requiring repeated abuse over a long period and
threatening permanent bodily harm or death. As Cornelia Hughes Day-
ton has argued, cruelty, not a refusal or failure of husbandly obligation
but an abuse of husbandly power, was a particularly risky basis for a
divorce petition. "Wives who petitioned for divorce on cruelty grounds
were asking the state to inspect the way in which a man governed his
family and to declare illegitimate certain actions over which the husband
had traditionally in English law been given wide discretion." As a con-
sequence, cruelty pleas became more restricted in the eighteenth century,
when the bench stopped granting child custody and the majority of mari-
tal property to wives divorcing irresponsible or immoral husbands and
began to view a wife who left the family home to escape a husband’s cru-
elty as deserting, "rebellious," and therefore guilty.50 Thus, even Con-
necticut moved toward punishing women’s independence and protecting
men’s authority, except when men abdicated their roles as household
governors through desertion.

Although there were formal and informal ways out of marriage, many
early modern people linked violence to the limited access to divorce.
Conceding that no man in scripture "cudgelled his wife," William Whate-
ly attributed this omission to the fact that Mosaic law allowed for divorce.
"No doubt that remedy made it needlesse to strike. No man would be pestered with a woman of shrewd disposition, that should enforce him to fighting, if with a dash of his pen, he might turne her packing." In *A Godly Form of Household Government*, one of the most popular early modern conduct books, John Dod and Robert Cleaver argued that the horror of realizing one is permanently and intimately tied to someone hateful leads to "so great ruines, so wicked and vile deeds, as maymes, and murthers, committed by such desperate persons, as are loth to keepe, and yet cannot lawfully refuse, nor leave them." As a consequence, "the husband that is not beloved of his wife, holdeth his goods in danger, his house in suspicion, his credit in baliance, and also sometimes his life in perill: because it is easie to beleve that shee desireth not long life unto her husband, with whom she passeth a time so tedious and irksome." In *Conjugall Counsell*, Thomas Hilder blamed parents who forced their children to marry against their inclination as "accessaries" to the consequent "brawlings and contentions . . . poysonings, or other bloudy plots to take away the naturall lives of either person." Given the limited availability of divorce, especially as initiated by women, Laura Gowing pointed out that "husband murder is a pragmaticcrime: death was the only sure way of exchanging one husband for another."15

For Mary Hobry, as a French Catholic woman in late seventeenth-century London, the options were even more restricted than usual. If Hobry's assessment of her situation, as depicted in various texts about her crime, corresponds only to the most negative interpretation of her real options, it does concisely express a way of thinking about the conceptual economy of selfhood within marriage. Marriage could only accommodate one full person. While marriage was the subject of intense scrutiny and redefinition in this period, depictions of marital strife, whether criminal or comic, revealed the tenacity of the notion that husband and wife are not really partners or yoke-fellows, but rather locked in a deadly struggle for dominance—or existence—which only one of them could win. Because marriage, so conceived, only allowed enough room for one person, one will, one full life, there was no way out of conflict but to submit or subjugate, die or kill. If only one could have a self, and the husband had an historically and legally privileged claim, then the wife could only usurp a self from her husband. As we have seen, many evaluations of battered women today claim that they experience their options in just this fatally limited way, despite expanding resources and changing possibilities. Linking this assessment to the history of a legal fiction suggests that seeing one's choices this way is not necessarily the result of mental illness or moral failure. I am not suggesting that all married women experience themselves as erased or think that they can only reassert themselves through violence. I am suggesting, instead, that when they do or when they are presented as doing
so, as happens surprisingly often, the idea that husband and wife become one person subtends and limits that depiction of their options.

Coverture—both as the collection of restrictions imposed on married women and as the figurative notion that the wife is "covered" by her husband—is not the source or origin of the idea that the husband subsumes his wife or that marriage can accommodate only one person. But coverture granted this notion prestige, focus, and authority, making it not real but rather a particularly powerful construction of reality. This conception of the couple long survives coverture, as the opening discussion of late twentieth-century U.S. films reveals. While coverture no longer defines married women's relation to property or to rights, many researchers argue that it persists precisely as violence. According to Isabel Marcus, "coverture cannot be said to have disappeared when its essential enforcement mechanism [i.e., violence] is available and widely used to maintain power and control in marriage." According to some researchers, wife-beating and murder in twenty-first century England and the United States not only defend male dominance but also express some husbands' inability or refusal to imagine their wives as separate and equal."

My own focus is not on how coverture actually causes violence, but how it shapes our imagination of marriage in ways that make violence seem inevitable. At the level of representation, the conception that a marriage can contain only one legal agent enacts violence by concentrating resources and privileges in the husband and erasing the wife. In a subtler way, this conception casts the wife's self-assertion as itself a kind of violence, which, in turn, provokes retaliation. Many historical accounts of murderous wives either lament women's oppression or celebrate their feistiness in killing off their mates. Both lamentation and celebration are too limited and limiting. As Mary Hobry learned, on the pyre if not before, killing is a very self-defeating form of self-assertion. Furthermore, celebrating murder as agency compounds the association of women's agency with violence, ignoring while reproducing a history in which married women's agency has often been understood as violently usurped from their husbands.

In debates about battered women who kill, as we've seen, the ghosts of the *femce covert* and the petty traitor still haunt attempts to understand the extent of a wife's agency and its relation to the violence she both endures and enacts. The fiction of spouses' "unity of person" also retains legal resonance in the practice of a wife surrendering her "maiden" name to take up her husband's last name upon marriage and in the principle that husband and wife cannot be compelled to testify against one another on the same grounds that an individual cannot be compelled to incriminate himself. Yet its reach extends beyond the courtroom. As films and novels about marital violence reveal, the zero-sum game of coverture survives as a narrative rather than a legal fiction, as a
plot in which each spouse must either die or kill. These stories seem new—since the murderous wives do not end up on the pyre or in prison—yet are not new enough because, as I have shown, they still imagine marriage as an economy of scarcity, and subjectivity within it as, therefore, inherently violent. Because unity of person was always a fiction, perhaps it is not surprising that it endures as one. Just as feminist political philosophers have asked how the “legacy of gender subordination . . . bears on the present,” how it lives unrecognized in our institutions or terms, I am asking how it structures the very stories we tell and by which we impose shape on experience. So I think that it is time to explore more supple ways of imagining and depicting the intimate connection between two people, then and now.

NOTES

8. Schneider, 122.


17. Ibid., 145.


22. Hunt, 121.

23. Hartog, 131, 85, 32, 37, 294-95, 38, 224.


American Antiquarian Society; Cambridge University Press, 2000).
35. Gouge, Of Domesticall Duties, sig. Cc4v.
41. Henry Goodcole, The Adulteresses Auncerall Day: In Flaming, Scorching, and Consuming Fire; Or, the Burning Downe to Ashes of Alice Clarke ... for the Unnatural Poisoning of Fortune Clarke Her Husband (London, 1635), sgs. Bv-B2v (emphasis mine); A Warning for Bad Wives (London 1678), 2 (emphasis mine).
42. A Warning to All Married Men and Women: Being the Full Confession of Mary Hobry, the French Midwife (London, 1688); Cabinet of Grief: Or, the French Midwife's Miserable Moon for the Barbarous Murther Committed upon the Body of Her Husband (London, 1688), 2; A Hellish Murder Committed by a French Midwife, on the Body of Her Husband (London, 1688), sig. E3v.
43. Hellish Murder, sig. E3v.
44. Ibid., sig. E4-E4v; Cabinet of Grief, 3, 10.
46. Ibid., sig. F4.
49. Carol Berkin and Leslie Horowitz, eds., Women's Voices, Women's Lives: Documents in Early American History (Boston: Northeastern University Press, 1998), 50. The options for non-Anglo inhabitants of the colonies and the new Republic were quite different. African American couples in which one or both were slaves might be separated by sale, against their will, at any time; Native American couples had easier access to "divorce." See Berkin and Horowitz, 53, and Shammus.
51. Whately, sig. P3; John Dod and Robert Cleaver, A Godly Forme of Houshold Gov-
ermament (London, 1630), sigs. K2v, L3; Thomas Hilder, *Conjugall Counsell: Or, Seasonable Advise, Both to Unmarried, and Married Persons* (London, 1653), 43. I am grateful to Dympna Callaghan for this reference; Gowing, 205.
